

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUJE, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 16th DECEMBER, 2021

FCT/HC/CV/2280/2021

BETWEEN:

AFOBAJE VENTURES LIMITED -----

CLAIMANT

AND

WIZ CHINA WORLDWIDE ENGINEERING LIMITED----- DEFENDANT

JUDGMENT

This write is brought under the undefended list with the number CV/2280/2021, dated and filed on the 10th September,2021 the Claimant claim against the Defendant as follows:-

1. The payment of ₦7,793,450.00 (Seven Million, Seven Hundred and Ninety- Three Thousand, Four Hundred and Fifty Naira) being the amount still unpaid on the construction subcontract on the 9.75km Saminaka Rahama Bauchi Border Road, Owed by the Defendant, to the Claimant.
2. ~~₦2,~~ 459,647.50 (Two Million, Four Hundred and Fifty- Nine Thousand Six Hundred and Forty Seven Naira Fifty Kobo) being the sum of repayable which the Defendant had earlier deducted from payments made to the Claimant under the construction sub-contract.

Total ₦10,253,097.50 (Ten Million Two Hundred and Fifty Three thousand Ninety Seven Naira Fifty Kobo).

3. The payment of 10% (10% interest) per annum on the outstanding debt by the Defendant to the Claimant.
4. The payment of ₦5,000,000.00 (five Million Naira) by the Defendant to the Claimant as damages for loss suffered by the Claimant in its commercial endeavours by reason of failure of the Defendant to pay the outstanding debt.
5. The payment of ₦1,500,000.00 (One Million Five Hundred Thousand Naira) by the Defendant to the Claimant for cost of all steps taken to recover the outstanding debt.

In the 24 paragraphs affidavit in support attached to his application the deponent one Ahmed Afobaje Balogun, the Managing Director of the Claimant was to take up a sub-construction work on 9.75km Saminaka Rahama Bauchi Border Road in consideration of the sum of ₦56,986,950.00 to be paid to the Claimant by the Defendant upon completion of the construction.

That by the construction sub-contract, the Defendant was to deduct 50% from the total sum payable to the Claimant as "*Retention sum*" which was made repayable to the Claimant of the construction.

That pursuant to the paragraph above the Defendant deducted the sum of ₦2,459,647.50 from the part payment made to the Claimant.

That the agreed one year has elapsed and the Defendant has not paid "*the retention sum*" made repayable under the contract.

That the Claimant performed its duties under the construction sub-contract by completing the sub construction work on 6th March, 2020. That the Claimant has only been paid ₦46,733,302.50 by the Defendant.

That the Claimant and the Defendant never had any prior understanding for the payment by instalment after completion and the Defendant is yet to pay the claim and the sum of ₦7,793,450.00 being the amount still unpaid on the contract and ₦2, 459,647.50 being the sum of repayable "detained sum" which Defendant deducted from earlier payment total ₦10,253,097.50 the last payment made to the Claimant was on the 6th March, 2020.

That the Claimant has approached the Defendant severally to pay up but same has refused and has been mischievous by making attempt to conceal themselves from the Claimant.

That non-payment of the sum owed by the Defendant has made it unable for the Claimant to pay its suppliers who have cut supplies thereby making the Claimant loose contract which is causing it a lot of commercial difficulties. 4 annexure are hereby attached to this application and a written address Counsel on behalf of the Claimant submits in their written address that order 35 of the rules of this Court has given the Court the power to enter judgment for a Claimant on a claim for a liquidated money demand. See ***NIGERIA PORTS AUTHORITY VS AMINU IBRAHIM LAWAL (2018) LPELR 44464 SC.***

Counsel submits that the Defendants has no defence on merit therefore the Claimant is entitled to the grant of the Claim as

ordered on the writ of summons being a liquidated money demand. Counsel submits that the Court can grant prejudging interest on a monetary or liquidated sum awarded to a successful party even in a litigation where such a party did not plead or adduce evidence in proof of such claim such interest to the instant case naturally accrues from the failure or refusal to pay the amount involved over a long period of time see ***NIGERIA PORT AUTHORITY VS AMINU IBRAHIM (supra). PETGAS RES LTD VS MBANETO (2007) 6 NWLR (pt. 1081) 545.***

That the Claimant is entitled to interest on the sum of money owed.

That in entering judgment for a claimant, a Court of law can grant damages for breach of contract see ***STEPHEN E. OKOWGURU VS NNPC (1989) 3 NSCC 118.***

That the power of the Court to award cost is enshrined in the rules of Court see order 36 of the rules of this Court. Finally Counsel urged the Court to grant the Claimant reliefs. the Defendants filed their notice of intention to defend dated 29th October, 2021 and file on the same day, in their 27 paragraph affidavit deposed to by Azubuike Ijeoma Mary the public relations officer of the Defendants averred that there was no agreement between the Claimant and the Defendants as claimed in paragraph 7 of the claimant affidavit.

Defendant averred that the reason which made the Defendant is yet to pay the money claimed in paragraph 11 of the Claimants affidavit is because the Kaduna State Government has not paid the Defendant the contract sum.

That the Defendant has written a demand letter to the Kaduna State Government in respect of the contract sum but the Kaduna State Government is yet to make payment.

That the payment certificate referred to in paragraph 12 of the Claimants affidavit shows the outstanding amount that will be paid to the Claimant after completion of the construction work.

Defendant denies paragraph 7,8,13,14,15 of the Claimant affidavit in support. In their written address Counsel on behalf of the Defendants, submit that the Defendant has disclosed in his affidavit a defence on the merit and therefore there are some triable issues see ***OLATUNBOSUM VS OKAFOR (2012) LPELR 20186 CA***. Attached are 2 annexures from the facts contained on the affidavit in support of the Claimant application and the notice of intention to defend and the affidavit attached thereto by the Defendant it is imperative to look at the case of ***ATAGUBA & CO VS GURE NIG LTD (2005) 8 NWLR (pt. 921) P. 429 Q 448***. The Supreme Court held that one of the main problems that often arise in the undefended list procedure is the consideration of whether the Defendants affidavit in support of the notice of intention to defend discloses a defence on the merit. In this regards it must disclose a prima facie defence. It is sufficient if the affidavit discloses:-

- a. A triable issues or that a difficult part of the law is involved.
- b. That there is a dispute as to the facts which ought to be tried.
- c. That there is a real dispute as to the amount due which requires the taking of account to determine or

d. Any other circumstances showing reasonable grounds of a bonifide defence.

In the instant case a close look at the Defendants affidavit show in paragraph 7 and 11 that the Defendant agrees with the Claimants on the amount owed which is ₦10,253,097.50 facts admitted need no further proof or facts not in dispute need no further proof and will be deemed established see ***OGELE VS EKWELENDU (1989) 7 SCNJ (pt 2) 62-1021, BENSEON VS THE STATES (2018) LPELR 48458 CA,***

To my mind the Defendants affidavit does not disclose a defence on the merit as there is no prima facie that he has a defence to the Claimants action. The Defendant admitted owing the Claimant the exact amount claimed and the only reason payment has not been made is because the Kaduna State Government has not paid see paragraph 7,9 and 11 of the Defendant affidavit attached.

A Defendant who is indebted to a Plaintiff and has no defence on the amount would be stopped from delaying to pay his indebtedness see ***THEOBROS AUTO LINE LTD VS BIAC CO. LTD SUIT NO. CA/C/18202021. Also cited in (2013) 2 NWLR (pt.33)*** from the facts contained on the affidavit in support of the notice of intention to defend, it clearly shows that the Defendant has no defence having admitted in his paragraphs 7,9 and 11 of the Defendant affidavit for Court to let the Defendant defend an undefended list suit, it must be satisfied that the Defendant has deposed to facts which disclose a prima facie or reasonable defence see ***FORTUNE INTL BANK VS CITY EXPRESS BANK 14 NWLR P86.***

Consequently having not disclosed a defence on merit judgment is hereby entered in favour of the Claimant against the Defendant. The Defendant shall pay the sum of ₦10,253,097.50 as the money claimed by the Claimant against the Defendant. On the issue of general damages based on the fact contain on the Claimant processes Defendant shall pay the sum of ₦200,000.00 as general damages and ₦100,000.00 as cost to the Claimant.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
16/12/2021

